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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/015,866
Filing Date: December 12, 2001
Appellant(s): HINNEBUSCH, MICHAEL

Peter K. Trzyna
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 19, 2009 appealing from the Office action mailed December 17, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 4,817,940	SHAW ET AL.	04-1989
US 6,458,060	WATTERSON ET AL.	10-2002
US 6,527,674	CLEM	03-2003
US 5,502,806	MAHONEY ET AL.	03-1996
US 6,052,512	PETERSON ET AL.	04-2000

Netpulse.com; February 20, 1999, 12 pgs.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3, 5-6, 20, 62, and 76-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw et al. (US Patent Number 4,817,940).

As per claims 1 and 76, Shaw et al. disclose an apparatus to produce an exercise routine personalized by a user, the apparatus method of creating a personalized

exercise routine, the method including:

-a first computer system programmed so as to facilitate forming machine-readable instructions corresponding to a personalized exercise routine, wherein protecting said machine-readable instructions are protected as private to a the user(col. 2, lines 7-12; col. 3, lines 22-26; abstract);

-a portable memory device storing the personalized exercise routine formed in the machine-readable instructions and received from the first computer system in a memory device(col. 7, lines 39-44); and

-a second computer system programmed to carry out operations comprising user- triggered enabling of: translating the private personalized exercise routine, stored in the portable memory device and retrieved from the portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise machine (col. 6, line 67- col. 7, line 9; *It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available, wherein the personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine; and the exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine.* Shaw et al further discloses *the user then carries the personal module 24 to another exercise machine and insert his personal module 24 into the exercise monitoring main unit connected to that exercise machine, wherein the personal database for the user on this machine is also stored on the personal module 24, and when the user completes an exercising routine on the machine, he then continues to the next machine. Upon completing a set of exercise routines on several different exercise machines, the user then carries his personal module 24 to* the exercise monitoring analyzer unit 300 for analysis (col. 7, lines 45-58); and

-controlling an exercise machine in carrying out the different personalized private exercise routine (col. 7, lines 45-58; *The user then carries the personal module 24 to another exercise machine and insert his personal module 24 into the exercise monitoring main unit connected to that exercise machine; and the personal database for the user on this machine is also stored on the personal module 24. When the user completes an exercising routine on the machine, he then continues to the next machine. Upon completing a set of exercise routines on several different exercise machines, the user then carries his personal module 24 to the exercise monitoring analyzer unit 300 for analysis).*

2. **As per claims 3 and 77**, Shaw et al. disclose an apparatus to create a personalized exercise routine, the apparatus method of using a system, the method including:

a first computer system programmed so as to provide providing at least one user interface that allows a user to select a type of exercise machine, and to create a private personalized exercise routine for the type of exercise machine that is selected (col. 13,

lines 49-59);

a second computer system programmed so as to carry out operations including translating the private personalized exercise routine, stored in and retrieved from a portable memory device, to a different personalized private exercise routine for each different type of user-selected exercise machine (col. 7, lines 45-58); and

wherein said second computer system is comprised of providing at least one of the types of exercise machine that carries out one said different to enable the exercise routine (col. 7, lines 45-58; col. 13, lines 49-59; FIG. 7; *the user then carries the personal module 24 to another exercise machine and insert his personal module 24 into the exercise monitoring main unit connected to that exercise machine, wherein the personal database for the user on this machine is also stored on the personal module 24, and when the user completes an exercising routine on the machine, he then continues to the next machine. Upon completing a set of exercise routines on several different exercise machines, the user then carries his personal module 24 to* the exercise monitoring analyzer unit 300 for analysis).

3. **As per claim 5,** Shaw et al. discloses the apparatus of **claim 1**, wherein the operations include further including the steps of: forming a profile of the user (col. 18, lines 14-31); and

maintaining the profile of the user as personal to the user (col. 7, lines 39-58).

4. **As per claim 6**, Shaw et al. discloses the apparatus of **claim 3**, wherein the operations include: allowing a user profile to be formed and stored in a personal account that is maintained, by the system, as personal to the user (col. 7, lines 39-58).

5. **As per claim 20**, Shaw et al. discloses the apparatus of **claim 3**, wherein the first computer system is programmed so as to facilitate forming a set of exercise routines that use different types of exercise machines and storing the set in the portable memory device (col. 7, lines 39-58; col. 13, lines 49-59).

6. **As per claim 62**, Shaw et al. discloses the apparatus of **claim 6**, wherein the operations include facilitating inputting into said profile of the user's birth date, gender, weight, height, or health history (col. 3, lines 26-31).

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), as applied to claim 1 above, and further in view of Watterson et al. (US Patent Number 6,458,060), still in further view of Clem (Patent Number 6,527,674).

8. **As per claim 4**, Shaw et al. discloses the apparatus of **claim 1**, but does not specifically disclose wherein the operations include storing, in a personal account, medical information and a charge card number respectively corresponding to the user, wherein said account is maintained as personal to the user.

However, Watterson et al. discloses that the step of storing the personal exercise routine includes a charge card number (col. 35, line 62 through col.36, line 8).

Clem discloses that the first plurality of information, may include, for example, a set of fitness goals for the user, at least one parameter (age, weight, sex, height, and medical conditions of the user) and includes all information entered by the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Shaw et al. to include the personal account feature of Watterson et al. and medical condition parameter of Clem in order to create a more personalized exercise routine for the user since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

9. Claims 7-11, 14-18, 21-24, 27-40, 42-43, 45, 49, 51, 53, 57-59, 66-69, 71-73, 79-82, 85- 87, and 89-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), as applied to claims 3 above, and further in view of Watterson et al. (US Patent Number 6,458,060).

10. **As per claim 7**, Shaw et al. discloses communicating signals corresponding to the exercise routine over a network to control over the different type of exercise machine (FIG. 1).

Shaw et al. do not disclose wherein said forming machine-readable instructions includes: programming a cardiovascular routine and wherein signals corresponding to the exercise routine are communicated over a network as the different type of exercise machine.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention Shaw et al. to include the feature of Watterson et al. in order to provide the user with the ability to program a variety of exercises focusing on different parts of the body. Also, it is old and well known in the health industry to provide users of exercise equipment with cardio exercises .

11. **As per claim 8**, Shaw et al. discloses the apparatus of **claim 3**, but does not specifically disclose wherein said operations include: accessing, via a virtual private network, a web-accessible library of modifiable preprogrammed routines; and modifying one of said preprogrammed routines.

However, Watterson et al. disclose that by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6); and routines that each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386 (col. 39, lines 43-45 and FIG. 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the ability or modify or personalize an exercise routine to fit his needs .

12. **As per claim 9,** Shaw et al. discloses the apparatus of **claim 3**, but does not specifically disclose wherein the first computer system is programmed as to facilitate: selecting a type of cardiovascular fitness machine as the different types of exercise machine, and specifying a duration of an exercise routine, a number of time intervals, an exercise intensity, and a speed for each of the intervals.

Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user with the ability to program a variety of personalized exercise.

13. **As per claims 10 and 78**, Shaw et al. discloses the apparatus of **claims 1 and 76**, respectively, wherein the first computer system is programmed so as to facilitate further including: downloading and storing the exercise routine on a the portable memory device that is physically transportable to said exercise machine to enable said user-triggered engaging step(col. 7, lines 45-55).

14. **As per claim 11**, Shaw et al. discloses the apparatus of **claim 10**, but does not specifically disclose wherein said step of storing includes storing by making an addition to a library of routines (col. 31, line 55-col. 32, line 12). However, the Examiner takes official notice that it is old and well known in the computer art to store additional routines and/or files in a library. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the library so users could access and store exercise routines.

15. **As per claim 14**, Shaw et al. discloses the apparatus of **claim 3**, but does not explicitly disclose wherein the operations include providing to the first computer system, via communication over a network an agreement to abide by gym rules. However, the fact of obtaining, via a communication over a network with a user computer an agreement to abide by gym rules is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of accessing and engaging the machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).* Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

16. **As per claims 15-16**, Shaw et al. discloses the apparatus of **claims 5 and 3**, respectively, but does not expressly disclose wherein the operations said step of forming a profile includes forming a profile including a charge card and authorization for use of the card; and wherein the operations include providing user access to the Internet at the exercise machine that carries out the one said different exercise routine wherein said providing includes providing the control over both of said types of exercise machine.

However, Watterson et al. discloses information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user (col. 35 lines 62-64); and communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online (col. 38, lines 48-60 and FIG. 12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order provide the user the convenience of paying with a credit card.

17. **As per claim 17**, Shaw et al. discloses the apparatus of **claim 3**, but does not specifically disclose an interface for communicating at least some personal profile data between computer systems of different gyms.

However, Watterson et al. disclose another object of the present invention is to provide an exercise system that enables a user to access various exercise equipment and information from a variety of locations (col. 2, lines 50-55; col. 36, line 61-66).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the convenience of using different equipment at several other locations.

18. **As per claim 18,** Shaw et al. do not disclose wherein the operations include enabling, with the stored charge card number, carrying out an on line purchase from the different type of exercise machine while exercising.

However, Watterson et al. disclose information is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user (col. 35 lines 62-64); and communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online (col.38, lines 48-60 and FIG. 12).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of making purchases online while exercising.

19. **As per claims 21-24,** Shaw et al. discloses the apparatus of **claims 5, 21 and 23**, respectively, but does not expressly disclose wherein the operations include providing a control for at least one type of media including video, TV, e-mail, stock prices, news, horoscope, hobby information, Internet media, or an electronic magazine, the control being stored in a profile stored in a profile of the user; and wherein the providing a control is carried out with two of the media; and wherein the providing a control is carried out with three of the media; and implementing the control by displaying media at said second exercise machine. .

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of making purchases online from any exercise equipment while exercising.

20. **As per claims 27-28 and 87**, Shaw et al. do not disclose the apparatus further including providing a browser interface presented at said exercise machine to control Internet communication.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of viewing online content and making purchases online from any exercise equipment while exercising.

21. **As per claims 29-30**, Shaw et al. do not disclose the interface for communicating the machine-readable signals into a controller between the Internet and the exercise equipment.

However, Watterson et al. disclose activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party (col. 10, lines 32-39 and FIG. 6); and by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of downloading exercise routines from a host from any exercise equipment.

22. **As per claims 31 and 43**, Shaw et al. discloses the apparatus of **claims 5-6**, respectively, but does not specifically disclose wherein the operation further include controlling with said profile output to a display device and a speaker jack at the exercise machine.

However, Watterson et al. disclose control panel 22 includes multiple video output devices 94 wherein the Video output device may allow a user to watch various types of entertainment and/or surf the internet, while receiving images representative of the exercise profile that they are following whether, periodically, upon activation of a user control, or the like (col.13, lines 18-27); and control panel 22 includes an audio output device 96, such as a hardwired and wireless speakers (col.13, lines 28-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of controlling the volume and the picture on an exercise machine.

23. **As per claims 32-33,** Shaw et al. discloses the apparatus of **claim 6**, but does not specifically disclose wherein the operations include further including the step of controlling with said profile interaction with Internet communication while exercising by use of a device from the group consisting of a video game joystick on said exercise machine and a flexible touch pad on the handles of the machine; .

However, Watterson et al. disclose panel 22 may include an integrally formed mouse 100, a keyboard jack 102 for an external keyboard 103, a controller port 104 for receiving one of a variety of games controllers, an integrally formed mouse 100, a touch sensitive video display, and various other ports, jacks, or the like to receive various other external components (col.12, lines 31- 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of interacting with machine or websites while exercising.

24. **As per claim 34**, Shaw et al. do not disclose wherein said hands-free programming includes selectable the content and presentation format coordinated with timing of the exercise routine.

However, Watterson et al. disclose if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of interacting with machine while exercising.

25. **As per claims 35-37**, Shaw et al. do not disclose the apparatus further including the step of monitoring and heart rate with a sensor at the equipment and monitoring speed and intensity of the exercise routine; and storing said heart rate, speed, and intensity in said user profile; and an interface for communicating signals corresponding to said heart rate, said speed, and said intensity in an Internet communication sent to the user of the first computer system a user computer.

However, Watterson et al. disclose the interface 190 is configured to transceive audio and visual signals of the user exercising, data and information about the user such as, heart rate, blood pressure, and the like that has been gathered by one or more health monitoring devices (col. 18, line 64 to col. 19, lines 1-4 and FIG. 8); if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6);) {the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming (col. 7, lines 33-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide a safety mechanism for the user, as well as, storing the readings for comparisons.

26. **As per claims 38-39 and 86**, Shaw et al. discloses the apparatus of **claims 3 and 76**, respectively, but does not specifically disclose wherein the first computer system is programmed to facilitate utilizing a calendar function to schedule use of the exercise machine; and utilizing a calendar function to schedule use of a group of pieces of exercise equipment such that the routine is carried out on said pieces of machine.

However, Watterson et al. disclose in one alternate embodiment, calendaring module 384 is linked with private room 394 such that upon scheduling a one-on-one exercise program, a private room is automatically scheduled for the user; and additionally, calendaring module 384 may automatically send a message to the users mailbox, thereby providing the user with information regarding the particular private room scheduled and a reminder of the schedule time (col. 40, lines 9-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide a the user the convenience of scheduling safety mechanism for the user, as well as, storing the readings for comparisons.

27. **As per claim 40, 61 and 79**, Shaw et al. discloses the apparatus of **claim 3**, but does not expressly disclose a virtual private network providing at least one user interface from the second computer system to the first computer system.

However, Watterson et al. disclose by activating the iFit.com button 82 a signal is transmitted to communication system 18 to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18 wherein the connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials, update exercise device software and operating parameters, research exercise materials, and the like (col. 10, lines 17–31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of downloading exercise routines from a host from any exercise equipment.

28. **As per claim 42**, Shaw et al. discloses the apparatus of **claim 3**, but does not disclose the apparatus wherein the operations include formatting output at a display device at said second exercise machine, said formatting including selectably enlarging the output.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that an enlarged output is old and well-known type of display in the computer art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of Watterson et al. to include an enlarged output so that users could have a better view of the program profile.

29. **As per claim 45**, Shaw et al. discloses the apparatus of **claim 6**, but does not expressly disclose wherein the operation include permitting, at discretion of the user, access to an exercise report, and storing the report in the profile.

However, Watterson et al. disclose if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33–44; FIGS. 1 and 6); and the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming (col. 7, lines 33-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the convenience of a trainer or doctor being able top view exercise reports, as well as, storing the readings for comparisons or analysis of progress.

30. **As per claims 48 and 82**, Shaw et al. discloses the apparatus of **claims 6 and 77,** respectively, but does not expressly disclose wherein the different type of exercise machine comprises one of at least a treadmill, an elliptical trainer, a stationary bike, a stationary ski machine, a stationary rowing machine, or a resistance type machine.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like (col. 44, lines 19-23; FIGS. 14 and 19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the ability to select different types of exercising equipment..

31. **As per claims 49, 80 and 83**, Shaw et al. discloses the apparatus of **claims 1, 6, or 76**, but does not specifically disclose wherein the first computer system is programmed to facilitate digitally specifying the second exercise machine so that exercising is carried out at a location corresponding to at least one of a home, a gym, a spa, an exercise facility of an apartment complex, and a hotel.

However, Watterson et al. disclose in the event that only audio program session is desired, the user initially selects the type of equipment that the program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like (col. 44, lines 19-23; FIGS. 14 and 19); and a exercise system that enables a user to access exercise equipment and equipment from a variety of locations (col. 2, lines 51-53).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of locating a machine available for exercising at a variety of locations.

32. **As per claim 51,** Shaw et al. discloses the apparatus of **claim 6**, but does not expressly disclose wherein the operations include maintaining a business operations database for use in carrying out the translating.

However, Watterson et al. disclose that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18 and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6); and alternatively, consumer purchase module 310 may include a database, whether relational, hierarchal, or the like that has stored specifications, pricing guides, illustrative images of exercise devices and products, and the like, that a user may search through to find the necessary or desired exercise equipment. Additionally, consumer purchase module 310 may include the necessary hardware and/or software modules to gather and store billing and purchase information from the user or alternatively, consumer purchase module 310 may communicate with a centralized accounting module that performs the necessary functions typically known by one skilled in the art related to accounting, billing, purchasing, sales, and the like activities (col. 38, lines 55-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the host the ability to maximize profits by monitoring use.

33. **As per claim 53, 71, and 85**, Shaw et al. discloses the apparatus of **claims 6 and 77** respectively, but does not specifically disclose wherein the operations include further including forming a client profile database containing a profile for each of a plurality of users; and wherein the operations include further including accepting, with said second computer system, a gym registration application communicated from the first computer system a personal computer of the user.

However, Watterson et al. disclose following the logging in procedure, the user is given access, as depicted by block 340, to communication module 254 to the specific level that they are allowed, based upon their responses to the various questions asked during the login procedure wherein, for example, if a user defines the exercise device as a treadmill located at home, the user may be limited to only the treadmill related web pages of iFit.com website 300; and similarly, if a user does not define any account information the user may be limited to only the free web pages and information available thereon, while being restricted to access the fee-based web pages, such as to purchase exercise profiles, exercise equipment, and the like (col.6, lines 22-28).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the host the ability to store information on clients, as well as, monitor use.

34. **As per claim 57 and 59**, Shaw et al. discloses the apparatus of **claim 6**, but does not specifically disclose wherein the operations include controlling output of visual and audio Internet media with said profile, the media including at least one of music, a video, multimedia, or chat; and providing, at the different type of exercise equipment, at least one user interface that includes a corresponding media display, the media from the group including at least one of video, audio, and text.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of viewing online content and making purchases online from any exercise equipment while exercising.

35. **As per claims 58 and 81**, Shaw et al. discloses the apparatus of **claims 6 and 76**, respectively, but does not specifically disclose wherein the first computer system is programmed so as to facilitate viewing and configuring reports including intensity levels of the exercise routine and heart rate through a web browser interface and at a personal computer.

However, Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. to provide the user the convenience of being able to interact with machine and view exercise reports, as well as, storing the readings for comparisons or analysis of progress.

36. **As per claims 66 and 89,** Shaw et al. discloses the apparatus of **claims 6 and 76**, respectively, but does not specifically disclose wherein the operations include providing entering a location indicator to find a gym capable of carrying out the step of providing control.

However, Watterson et al. disclose that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18, and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6).

Watterson et al. is silent about entering an indicator to find a gym to carry out the step of controlling.

However, it would be obvious to one of ordinary skill in the art at the time the invention was made that if a user is inside a gym, the user would have to do this to this to find available exercise equipment.

37. **As per claim 67**, Shaw et al. discloses the apparatus of **claim 6**, but does not specifically disclose wherein the exercise routine on the portable memory device includes an instruction providing control over speed of the different type of exercise machine.

However, Watterson et al. disclose it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide a safety mechanism for exercise equipment that may be going too fast.

38. **As per claim 68**, Shaw et al. discloses the apparatus of **claim 6**, but does not specifically disclose wherein the operations include setting a filter of at least one of web subject matter or content in said profile.

However, Watterson et al. disclose by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6).

Watterson et al. is silent about setting a filter for at least one web subject matter or content in the profile, however, The Examiner takes Official notice that a web filter is an old and well-known type of content controller in the computer art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the web filter to control web subject matter and content the users has access to.

39. **As per claim 69**, Shaw et al. discloses the apparatus of **claim 6**, but does not expressly disclose wherein the operations include controlling computer enabled permission for another to form a group of users.

However, Watterson et al. disclose activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party (col. 10, lines 32-39 and FIG. 6); and in one embodiment, as a third party controls the operation of the exercise devices, the trainer can communicate motivational messages to the trainee users. Watterson et al. further disclose that each user and/ or trainer may save unique exercise programs created by the user and/or

trainer within data storage 390 accessible by mailbox module 386 (col. 39, lines 43-45 and FIG. 16)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. in order to provide the user the ability to give others access to the exercise equipment.

40. **As per claims 72-73 and 90**, Shaw et al. discloses the apparatus of **claims 1, 3, and 77**, respectively, but does not disclose accepting a gym registration application over the network; and accepting, with said second computer system, a gym registration application communicated from a computer of the user the fact of accepting a gym registration application over the network, however, accepting, with said second computer system, a gym registration application communicated from a computer of the user is nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of forming machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack, 703 F .2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); In re Lowry, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)*. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

41. Claims 12-13, 60 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), as applied to claims 3 and 76 above, and further in view of Watterson et al. (US Patent Number 6,458,060), in further view of Mahoney et al. (Patent Number 5,502,806).

42. **As per claims 12-13, 60 and 88**, Shaw et al. discloses the apparatus of **claims 3 and 6**, but does not expressly disclose wherein the operations include facilitating swiping at least one of a credit card or smart card for access to the different type of exercise machine.

However, Watterson et al. discloses that login registration module 302 assists the user in defining a login user identification number and password that are unique to the particular user. Watterson et al. discloses that following the logging in procedure, the user is given access (col. 36, lines 9-33).

Watterson et al. does not disclose swiping a credit card or smart card for access to the exercise equipment.

Mahoney et al. is silent about using that the waiting line management system on exercise equipment. However, exercise equipment could be considered within the scope of this invention because Mahoney et al. discloses that the invention can be applied in any situation where the current demand for the delivery of a service or admission to a facility exceeds the current capacity.

Therefore, it would have been obvious to modify the exercise equipment of Shaw et al. to include the feature of Watterson et al. and Mahoney et al. to provide faster access to the personalized exercise routine and also because the problem solved by Mahoney et al., waiting line management, would work the same on exercise equipment as theme park rides.

43. Claims 63-64 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), as applied to claims 6 and 77 above, and further in view of Watterson et al. (US Patent Number 6,458,060), in view of Peterson et al. (Patent Number 6,052,512).

44. **As per claims 63-64 and 84**, Shaw et al. do not disclose wherein the operations include facilitating further including inputting membership of a gym into said profile; and wherein the operations include inputting location of the gym and a gym membership identification number to the first computer system.

However, Watterson et al. disclose that login-registration module 302 may track the particular locations where the user trains to identify a user profile of the user's exercise activities throughout the United States of America or the World, wherein such information may then be used to provide the user with specific information related to those locations where the user exercises most (col. 36, lines 61-66).

Watterson et al. is silent regarding inputting a gym membership, location of the gym, and a gym membership identification number into a profile.

Peterson et al. disclose that subject equipment 2210 is a computer processor-controlled piece of exercise equipment such as an exercise bicycle, treadmill, stair-stepper, skier, or climber; and a user identifies herself by swiping a gym membership card with a magnetic strip or bar code through a card reader attached to subject equipment 2210; and compliance monitor 2102 receives an identification number retrieved from the card reader and recognizes the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. and Peterson et al. in order to track the user's activity in order to send the user targeted advertising to exercise and non-exercise related businesses or services within the city or state of the place where the individual commonly visits or exercises (Watterson et al; col. 36, lines 67 to col. 37, line 3).

45. Claims 74-75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US Patent Number 4,817,940), as applied to claim 3 above, and further in view of Watterson et al. (US Patent Number 6,458,060), in view of Netpulse.com.

46. **As per claims 74-75**, Shaw et al. do not disclose the step of managing a gym membership with said second computer system, tracking fees of gym users, and issuing invoices.

However, Netpulse.com discloses that Netpulse Communications manages a network of Internet-connected exercise machines in fitness centers around the country (Page 2); and Netpulse.com further discloses that the company's Netpulse Network is also becoming a valuable advertising, merchandising, and direct marketing tool for consumer product companies who want to reach an attractive demographic at the point of sweat. Netpulse.com does not expressly teach tracking fees of gym users, and issuing invoices, however, it is old and well known in the business industry that tracking and billing techniques are used where goods and services are provided on to customers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Shaw et al. to include the feature of Watterson et al. and Netpulse to include the tracking and billing feature in order to charge users for equipment and Internet usage.

(10) Response to Argument

Group 1, Independent Claims 1, 3, and 76:

1. Appellant's first argument appearing on page 27 of the appeal brief, is that, with respect to claims 1, 3, and 76, Shaw does not teach the claimed operation of *"translating in the context of the independent claims, each as a whole"*. Specifically, the Appellant argues *"translating the private personalized exercise routine.., to a different personalized private exercise routine for each different type of user selected exercise machine"* is in no way anticipated by a teaching of the exercise monitoring analyzer programs being written in different languages, or on a general purpose microprocessor.

2. In response to Appellant's argument, the examiner asserts that Shaw et al discloses "Each user of the exercise machine 30 has an exercise monitoring personal module 24, wherein the exercise monitoring personal module 24 contains the data necessary for the microcomputer 122 to compute the performance characteristics of the user for the particular exercise machine 30. *Because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available. *The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine.* The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine (col. 7, lines 24-44).

3. The Appellant further argues that the first issue is that "translating the private personalized exercise routine" is that the translation is of an exercise routine, not a program as the Examiner has apparently interpreted the claims to mean. Plainly claimed, an "exercise routine" is not a programming language.

In response to Appellant's argument, the examiner notes that Shaw et al. discloses *another advantage of this system is its adaptability to various types of exercise machines. Each exercise machine has an exercise monitoring main unit*

and an exercise monitoring screen attached to it (col. 1, lines 62-65). Shaw et al. still further discloses "*because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the *exercise monitoring personal module 24 contains user data for every exercise machine available.* The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine. *The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine* (col. 6, line 65-col. 7, line 9). *The Examiner interprets this to mean routines are translated into machine-readable instructions for another machine.*

4. The Appellant further argues that the second issue is that these claims call for "translating...exercise routine...to a different exercise routine", i.e., translating from a first exercise routine to a different exercise routine for different exercise equipment, not from one programming language to another.

In response to Appellant's argument, the examiner asserts that Shaw et al. discloses "*because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available. The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to

a different exercise machine. *The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine (*col. 6, line 65-col. 7, line 9*). The Examiner interprets this to mean routines are translated into machine-readable instructions for another machine.*

5. The Appellant further argues that according to Figure 12, in block 68, the system 1 translates the exercise routine into machine-readable instructions for the actual machine type (See Pg. 43, Para. 3, Lns. 8-9. and in Pg. 4, Para. 3, Lns. 6-9.); and it appears that the Examiner has parsed the claim language out of context and applies unrelated interpretations of the claimed elements to construct a rejection, which is contrary to giving the claims their broadest reasonable interpretation consistent with the teachings of the specification.

In response to Appellant's argument, the examiner asserts that an inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" (MPEP § 2111.01.111). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by translation we mean"; "translation is defined as"; or "translation" includes, ... but does not include ...".
In the instant case, the examiner is required to give the term its broadest reasonable interpretation (MPEP § 2111), which the examiner judges to be " *routines are translated into machine-readable instructions for another machine".*

Group 2, Dependent Claim 4:

6. Appellant's first argument appearing on page 28 of the appeal brief, is that, with respect to claim 1, Shaw does not disclose or teach which is recited in claim 1, including "*translating the private personalized exercise routine,* stored in the portable device and retrieved from the portable memory device, *to a different personalized private exercise routine for each different type of user-selected exercise machine".*

In response to Appellant's argument, the examiner asserts that Shaw et al discloses "Each user of the exercise machine 30 has an exercise monitoring personal module 24, wherein the exercise monitoring personal module 24 contains the data necessary for the microcomputer 122 to compute the performance characteristics of the user for the particular exercise machine 30. *Because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available. *The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine.* The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine (col. 7, lines 24-44).

7. The Appellant further argues that the first issue is that "translating the private personalized exercise routine" is that the translation is of an exercise routine, not a

program as the Examiner has apparently interpreted the claims to mean. Plainly claimed, an "exercise routine" is not a programming language.

In response to Appellant's argument, the examiner notes that Shaw et al. discloses *another advantage of this system is its adaptability to various types of exercise machines. Each exercise machine has an exercise monitoring main unit and an exercise monitoring screen attached to it* (col. 1, lines 62-65). Shaw et al. still further discloses "*because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the *exercise monitoring personal module 24 contains user data for every exercise machine available.* The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine. *The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine* (col. 6, line 65-col. 7, line 9*). The Examiner interprets this to mean routines are translated into machine-readable instructions for another machine.*

8. The Appellant further argues that according to Figure 12, in block 68, the system 1 translates the exercise routine into machine-readable instructions for the actual machine type (See Pg. 43, Para. 3, Lns. 8-9. and in Pg. 4, Para. 3, Lns. 6-9.); and it appears that the Examiner has parsed the claim language out of context and applies unrelated interpretations of the claimed elements to construct a rejection, which is contrary to giving the claims their broadest reasonable interpretation consistent with the

teachings of the specification.

In response to Appellant's argument, the examiner asserts that an inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" (MPEP § 2111.01.111). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by translation we mean"; "translation is defined as"; or "translation" includes, ... but does not include ...".
In the instant case, the examiner is required to give the term its broadest reasonable interpretation (MPEP § 2111), which the examiner judges to be " *routines are translated into machine-readable instructions for another machine".*

9. The Appellant's further argues that Clem does nothing to remedy the aforesaid deficiencies in the teachings of Shaw and Watterson et al. Further, Clem has not been shown to be prior art. Clem is a CIP filed on June 8, 2000. Applicant's first priority date is April 1,2000..

In response to Appellant's argument, the Examiner asserts that, in regards to claim 4, Clem discloses that the first plurality of information, may include, for example, a set of fitness goals for the user, at least one parameter (age, weight, sex, height, and medical conditions of the user) and includes all information entered by the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Shaw et al. to include the personal account feature of Watterson et al. and medical condition parameter of Clem in

order to create a more personalized exercise routine for the user since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Furthermore, the examiner is unable to locate Appellant's first priority date of April 1, 2000 referred to by Appellant. Also, while Clem is a CIP files on June 8, 2000, Appellant claim language of "maintaining information as private/personal to the user" was introduced in Co-pending Application 09/977,557 on October 16, 2001. Thus, Clem is maintained as being prior art.

Group 3, Dependent Claims 7-11, 12-13, 60 and 88, 15-18, 21-24, 27-40, 42-43, 45, 49, 51, 53, 57-59, 66-69, 71, 79-82, 85-87, 78, 61, 48, 83, and 89:

10. The examiner thanks the Appellant for noting claims 78, 61, 48, and 83 were not in the header, but rejected in the body of the rejection, as well as, including those such claims in Group 3.

11. The Appellant argues on page 31 of the Appeal Brief that the Examiner has been completely silent on the particular points raised in the Applicant's response filed August 29, 2008.

In response to Appellant's argument, the examiner respectfully disagrees. The examiner responded to the Appellant's arguments regarding "translation" in the final

Office Action dated December 17, 2008, as well as office actions dating back to January 28, 2005.

12. Appellant's appearing on page 31 of the appeal brief, is that, with respect to claims 1, 3, and 76, Shaw does not teach the claimed operation of *"translating in the context of the independent claims, each as a whole"*. Specifically, the Appellant argues *"translating the private personalized exercise routine.., to a different personalized private exercise routine for each different type of user selected exercise machine"* is in no way anticipated by a teaching of the exercise monitoring analyzer programs being written in different languages, or on a general purpose microprocessor.

In response to Appellant's argument, the examiner asserts that Shaw et al discloses "Each user of the exercise machine 30 has an exercise monitoring personal module 24, wherein the exercise monitoring personal module 24 contains the data necessary for the microcomputer 122 to compute the performance characteristics of the user for the particular exercise machine 30. *Because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine*. It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available. *The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine*. The exercise monitoring main unit software from operator input determines the correct performance data for

the user on the particular exercising machine (col. 7, lines 24-44).

13. The Appellant further argues that the first issue is that "translating the private personalized exercise routine" is that the translation is of an exercise routine, not a program as the Examiner has apparently interpreted the claims to mean. Plainly claimed, an "exercise routine" is not a programming language.

In response to Appellant's argument, the examiner notes that Shaw et al. discloses *another advantage of this system is its adaptability to various types of exercise machines. Each exercise machine has an exercise monitoring main unit and an exercise monitoring screen attached to it* (col. 1, lines 62-65). Shaw et al. still further discloses "*because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine.* It is important to note that the *exercise monitoring personal module 24 contains user data for every exercise machine available.* The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine. *The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine (*col. 6, line 65-col. 7, line 9*). The Examiner interprets this to mean routines are translated into machine-readable instructions for another machine.*

14. The Appellant further argues that the second issue is that these claims call for "translating...exercise routine...to a different exercise routine", i.e., translating from a

first exercise routine to a different exercise routine for different exercise equipment, not from one programming language to another.

In response to Appellant's argument, the examiner asserts that Shaw et al. discloses "*because of the universal nature of the exercise monitoring unit 100 and the sensors 20 and 22, the exercise monitoring main unit 100 can be connected to any exercise machine*. It is important to note that the exercise monitoring personal module 24 contains user data for every exercise machine available. The personal module may be removed from the exercise monitoring main unit 100 connected to a particular exercise machine, and inserted into another exercise monitoring main unit connected to a different exercise machine. *The exercise monitoring main unit software from operator input determines the correct performance data for the user on the particular exercising machine (*col. 6, line 65-col. 7, line 9*). The Examiner interprets this to mean routines are translated into machine-readable instructions for another machine.*

15. The Appellant further argues that according to Figure 12, in block 68, the system 1 translates the exercise routine into machine-readable instructions for the actual machine type (See Pg. 43, Para. 3, Lns. 8-9. and in Pg. 4, Para. 3, Lns. 6-9.); and it appears that the Examiner has parsed the claim language out of context and applies unrelated interpretations of the claimed elements to construct a rejection, which is contrary to giving the claims their broadest reasonable interpretation consistent with the teachings of the specification.

In response to Appellant's argument, the examiner asserts that an inventor may define specific terms used to describe invention, but must do so "with reasonable clarity,

deliberateness, and precision" (MPEP § 2111.01.111). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by translation we mean"; "translation is defined as"; or "translation" includes, ... but does not include ...".
In the instant case, the examiner is required to give the term its broadest reasonable interpretation (MPEP § 2111), which the examiner judges to be " *routines are translated into machine-readable instructions for another machine"*.

16. The Appellant argues that Watterson et al. does not teach the claimed translating personal private exercise routine.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

17. The Appellant further argues on page 33 of the appeal brief, that neither Shaw et al., nor Watterson teaches, "protecting instructions as private to a user".

In response to the Appellant's argument, the Examiner respectfully disagrees. Shaw et al discloses the user of the machine has a portable exercise monitoring personal module (col. 3, lines 22-26). Shaw et al. further disclose the user can store a particular exercising routine performed on the exercise machine in the exercise monitoring personal module 24 (col. 7, lines 39-42).

Group 4, Dependent Claims 63-64 and 84:

In response to Appellant's arguments regarding Group 4 (claims 63-64 and 84), the examiner respectfully disagrees for all the reasons stated above for claims 1, 3, and 76 and Group 3.

Group 5, Dependent Claims 14, 72-73, and 90:

In response to Appellant's arguments regarding Group 5 (claims 14, 72-73 and 90), the examiner respectfully disagrees for all the reasons stated above for claims 1, 3, and 76 and Group 3.

Group 6, Dependent Claims 74-75:

In response to Appellant's arguments regarding Group 6 (1claims 74-75), the examiner respectfully disagrees for all the reasons stated above for claims 1, 3, and 76 and Group 3.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Conferees:

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